

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KASHNER DAVIDSON SECURITIES CORP., *et al.*

v.

STEVEN MSCISZ, *et al.*

)
)
)
) Case No. 05-CV-11433-JLT
)
)
)

**DEFENDANTS' EMERGENCY MOTION FOR 7-DAY
STAY OF PROCEEDINGS TO ENFORCE JUDGMENT**

Defendants/plaintiffs-in-counterclaim Steven Mscisz, Mark Mscisz and Lynda Mscisz (collectively "Customers") respectfully request that the Court forbear from issuing a writ of execution and otherwise stay proceedings to enforce the judgment (DE #27) issued in the captioned action for a period running seven days from the Court's decision on this motion. The reasons (including citation of supporting authorities) why the motion should be granted are set forth in the following memorandum:

1. The Customers respect the Court and its ruling, but they nevertheless believe that the final judgment resulted from reversible errors. Accordingly, on December 22, 2006, the Customers filed a Notice of Appeal (DE #28).

2. Contemporaneously with their filing of the Notice of Appeal, the Customers notified plaintiffs' counsel that they would be procuring a supersedeas bond. *See* Ex. A. That bond will be in the amount specified by Local Rule 62.2, will take the form specified by Local Rule 67.1(b), and will be secured in the manner specified by Local Rule 67.1(c). Accordingly, the Customers' supersedeas bond will presumably be approved by the Clerk, LR 67.1(f), and thus effect an automatic stay. FED. R. CIV. P. 62(d).

3. Because the Notice of Appeal was filed in the midst of the holiday season, the logistics inherent in the Customers' obtaining such a large supersedeas bond (in excess of \$500,000.00) have been unusually complicated. While the Customers have ample ability to obtain such a bond and are working diligently to procure it, the Customers did not receive necessary information from their accountant until this afternoon. Their completed application can now be submitted to and processed by the bonding company.

4. Although the plaintiffs and their attorneys knew that the Customers would be securing a supersedeas bond (and that the holiday season interposed significant logistical hurdles), they today requested that the Court issue a writ of execution (*see* DE #29). Accordingly, to prevent needless disruption of the Customers' affairs, it is necessary for them to proceed on an emergency basis and request a modest stay of proceedings to enforce the judgment pending the processing of their bond application and the Clerk's subsequent approval of the bond.

5. Seven days should afford ample time for the surety company and the Clerk to process the Customers' supersedeas bond and effectuate the automatic stay provided by FED. R. CIV. P. 62(d).

WHEREFORE, the Customers respectfully request that the Court allow this motion and defer issuance of a writ of execution for seven days following its decision on this motion, concomitantly staying all other proceedings to enforce the judgment for the same seven-day period.

STEVEN MSCISZ,
MARK MSCISZ & LYND A MSCISZ,

By their attorney,

/s/ William P. Corbett, Jr.

William P. Corbett, Jr. (BBO #561201)
THE CORBETT LAW FIRM
A Professional Corporation
85 Exchange Street, Suite 326
Lynn, Massachusetts 01901-1429
(781) 596-9300

Dated: December 28, 2006

LOCAL RULE 7.1(A)(2) CERTIFICATE

I hereby certify that I conferred by telephone on this 28th day of December, 2006, with Howard M. Smith, Esquire, attorney for the plaintiffs/defendants-in-counterclaim, attempting in good faith to resolve or narrow the issues raised by this motion.

/s/ William P. Corbett, Jr.

William P. Corbett, Jr.

CERTIFICATE OF SERVICE

Pursuant to Local Rules 5.4(c) and 5.2(b), I hereby certify that this document, which is being filed with the Court through its ECF system, will be sent electronically to Howard M. Smith, Esquire, a registered ECF participant and attorney of record for the plaintiffs/defendants-in-counterclaim, on this 28th day of December, 2006.

/s/ William P. Corbett, Jr.

William P. Corbett, Jr.

Exhibit A

Bill Corbett

From: Bill Corbett [wpc@bostonbarristers.com]
Sent: Friday, December 22, 2006 3:55 PM
To: 'hms@hmsmith.com'
Subject: FW: Activity in Case 1:05-cv-11433-JLT Kashner Davidson Securities Corporation v. Mscisz et al "Notice of Appeal"

Howard,

Be advised that my clients will be filing an appeal bond either later today or early next week, depending on whether the bond can be processed in a timely fashion, in light of the upcoming holiday. As you know, that bond will automatically stay the judgment until the appeal is finally resolved. Fed. R. Civ. P. 62(d).

Regards,

Bill Corbett

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-----Original Message-----

From: ECFnotice@mad.uscourts.gov [mailto:ECFnotice@mad.uscourts.gov]
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United States District Court

District of Massachusetts

Notice of Electronic Filing

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Case Name: Kashner Davidson Securities Corporation v. Mscisz et al
Case Number: [1:05-cv-11433](#)
Filer: Steven Mscisz
Mark Mscisz
Lynda Mscisz

WARNING: CASE CLOSED on 11/30/2006

Document Number: [28](#)

Docket Text:

12/28/2006

NOTICE OF APPEAL as to [27] Judgment by Lynda Mscisz, Lynda Mscisz, Steven Mscisz, Mark Mscisz, Lynda Mscisz, Steven Mscisz, Steven Mscisz, Mark Mscisz, Mark Mscisz. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <http://www.ca1.uscourts.gov/clerks/transcript.htm> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 1/11/2007. (Corbett, William)

The following document(s) are associated with this transaction:

Document description:Main Document

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[STAMP dcecfStamp_ID=1029851931 [Date=12/22/2006] [FileNumber=1701631-0] [60b5308fec194c1204558ab5e5d3185532d0cf778a8090ed377264d22a1c639f41d9fd7a91945e87b35518bbf4f9f78430b6a18a3c421a65de403ff902a1ce3c]]

1:05-cv-11433 Notice will be electronically mailed to:

William P. Corbett , Jr wpc@bostonbarristers.com

Howard M. Smith hms@hmsmith.com

1:05-cv-11433 Notice will not be electronically mailed to:

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